Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

IN RE: PAUL R. JONES,

Petitioner

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

Can Ninth Circuit's voluminous casework load justify abrogating Petitioner Jones' Fifth Amendment Due Process provisions for a speedy determination?

PARTIES TO THE PROCEEDING

The Petitioner is Paul R. Jones, Pro Se Petitioner. The Respondents are Salt River Pima-Maricopa Indian Community, Eric Vimmerstedt, Sharon Carl, Janet Lacapa, Michael LaLonde and Bryan Meyers.

CORPORATE DISCLOSURE STATEMENT

None

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STATEMENT OF JURISDICTION

1. **The date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11). There is no judgment or order available from the Ninth Circuit.**

2. **The date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for an extraordinary writ. There is no order available from the Ninth Circuit.**

3. **Express reliance on Rule 12.5.... None**

4. **The Statutory provision believed to confer on this Court jurisdiction to review on an extraordinary writ the judgment or order in question.**

   (1) Statement for the jurisdiction of The United States Supreme Court is 28 U.S.C. #1651(a), and Article III, Section 2 of the United States Constitution to protect the Constitution from infringement by stealth.

   (2) The Ninth Circuit Court of Appeals is an inferior court to The United States Supreme Court. Petitioner alleges the Ninth Circuit is hostile to his case because he is a (A). Pro Se Petitioner and (B). He is challenging the Constitutionality of Title 25 U.S.C. and its progeny as being an invidious racial classification discrimination enactment that subordinate the Constitution to a tribal community which the Ninth Circuit is unwilling to address.

(3) Petitioner cannot provide a copy of rulings or orders from the Ninth Circuit which is the center of his dispute as the Circuit has not rendered any ruling or orders. Nor has the Ninth Circuit calendared his case. This is the reason Petitioner believes there exists an exceptional circumstance that warrants the exercise of The Supreme Court's discretionary powers for the execution of an extraordinary writ from the Supreme Court. The Ninth Circuit Administrative personnel informed Petitioner by telephone it could take up to 18 months to calendar his case. This is in addition to the 2+ months delay while the Ninth ostensibly searched for his 2 'misplaced' submissions that were critical to the disposition of his case. Execution of this extraordinary writ will aid the Court's appellate jurisdiction by causing a calendaring and ruling from the Ninth Circuit to be forthcoming in timely manner and avoid the Constitutional questions of (1) whether the Ninth Circuit's workload justifies abrogating Petitioner's 1st, 5th , and 9th Amendment rights and (2) whether the Ninth's pattern of inaction is to avoid addressing the underlying question of whether Title 25 U.S.C. and its progeny are invidious racial classification discrimination enactments that subordinates the Constitution to a tribal community. Petitioner's effort to seek adequate relief from the Chief Judge of the Ninth Circuit has been met with hostile silence. Petitioner has no other avenue or form or any other court to seek vindication of his conceded Constitutional rights except The Supreme Court of the United States.

5. **If applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.**
None

Petitioner respectfully petitions for an extraordinary writ to secure a ruling from the 9th Circuit in pending case No. 04-15569 (9th CIR.2004).

OPINIONS BELOW

None

TREATIES

None

STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. #1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

2. Article III, Section 2: The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

3. Article VI: Oath of Office: Judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN THE CASE.

None

STATEMENT OF THE CASE

Petitioner alleges that the 9th Circuit US Court of Appeals is hostile to the case of the Petitioner for redress of his claim against the tribal community and individual respondents who terminated his employment without due process and who now seek to shield themselves from Petitioner's judicial review of their actions through alleged claims of absolute tribal sovereignty preventing federal court review of their actions.

The graveman of Petitioner's claim is that the U.S. Constitution applies in full force to Tribal communities and their actions must comply with all provisions of the U.S. Constitution which are accorded to all citizens whether tribal members or not. (James A. Poore, *The Constitution of the U.S. Applies to Indian Tribes* (1998) 59 Montana L. Rev. 51.) Petitioner contends that 25 U.S. et seq constitute an invidious racial classification discrimination that subordinate the Constitution to a tribal community which the 9th Circuit is not willing to consider nor order the lower Federal District Court to hold hearings upon the issues such as the impact of *The Indian Citizenship Act of 1924* to ascertain the validity of the Petitioner's claimed injustice towards him in the Tribal action of employment termination.

II

Petitioner alleges that his 1st, 5th and 9th Amendment rights under the U.S. Constitution are being infringed as a result of the 9th Circuits inaction on his Emergency Petition to expedite calendaring of his case for appellate review.

Petitioner had submitted to the 9th Circuit his Emergency Petition (Attachment #1) which was received on November 15, 2004 by that Court as indicated on the Certified Return Receipt attached herein. (Attachment #2) In the Emergency Petition, Petitioner sought immediate calendaring by the Court to consider relief from the Federal District Courts decision on whether or not the alleged mailing of the Appellee's Motion to Dismiss to the Appellant [Petitioner herein] via a 37 cent U.S. postage stamp satisfies Petitioner's due process rights to adequate notice under the 5th Amendment of the U.S. Constitution consistent with the rulings in (1950) *Mullane v. Central Hanover Bank & Trust 339 U.S. 306.* The 9th Circuit has not ruled nor acted in any other fashion on the Emergency Petition as of this date. More than 90 days have elapsed since the submission and delay is prejudicial to the Petitioner's overall case.

III

Petitioner alleges that the 9th Circuit's administrative practices discriminate against due process to a speedy determination of appeals lodged with the Circuit Court.

As described in the *Wall Street Journal* Tuesday, November 23, 2004, *Letters to the Editor-Take Our Ninth Circuit Court-Please!* (Attachment #3) written by U.S. Judges for the Ninth Circuit, Diarmuid F. O'Scannlain and Richard C. Tallman, Portland, Oregon will unduly delay a determination on the Emergency Petition. By informal information, Petitioner was advised that it will take at least 18 months for his matter to be heard by the 9th Circuit. Such a delay is intolerable and denies due process.

IV

Authorities in Support of the Petitioner's Request of Issuance of an extraordinary Writ:

1. "Constitutional rights may not be denied simply because of hostility to their assertion and exercise: Vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them." *Watson v. Memphis, 375 U.S. 526. (1963)* (Specific rights in a work environment are: First, Fifth, and Ninth Amendments to be free from race and age discrimination, free from harassment and defamation and free from retaliation for seeking protection of Petitioner's Constitutional protections in a federal court established in accordance with Article III, section 2 and Article IV, section 4 of the Constitution)

2. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436, 491. (1966)

3. "History is clear that the first ten amendments to the Constitution were adopted to Secure certain common law rights of the people, against invasion by the Federal Government." *Bell v. Hood, 71 F.Supp., 813, 816 (1947) U.S.D.C. -- So. Dist. CA.*

4. "Constitutional provisions for the security of person and property should be liberally construed. It is the duty of the courts to be watchful of constitutional rights against any stealthy encroachments thereon." *Boyd v. U.S., 116 U.S. 635. (1886*

5. "Economic necessity cannot justify a disregard of cardinal constitutional guarantee." *Riley v. Certer, 165 Okal. 262; 25 P.2d 666; 79 ALR 1018.*

REASONS FOR GRANTING THE WRIT

I. SUMMARY OF THE ARGUMENT

This petition should be granted to avoid a Constitutional crises of (1) whether Ninth Circuit Court of Appeal's voluminous case workload is justification for abrogating Petitioners 1st, 5th and 9th Amendment protections to seek a speedy determination of his appeal lodged with the Circuit Court and (2) is the Ninth avoiding addressing the underlying question of whether Title 25 U.S.C. and its progeny is/are invidious racial classification discrimination enactment(s) that subordinate the Constitution to a tribal community. The Ninth Circuit's inaction to Petitioner's Emergency Petition to the Chief Judge for the Ninth Circuit Court of Appeal aggravated by the Circuit Court's less than forthcoming efforts to locate two separate documents sent with postal proof of delivery that were critical to his appeal but were twice 'misplaced' by the Ninth's Administration supports Petitioner's allegations of hostility by the Circuit Court towards his appeal. The Ninth Circuit's three judges were quick to deny Petitioner's Motion for Injunctive Relief against the Defendant's counsel and his requests for waiver of page count and his Motion to Strike to be viewed as a Motion and not a Reply Brief. However, when his appeal was ready for calendaring, he was told via telephone by Mr. Westbrook the calendaring machinery could take up to 18 months to work. The 18 month time line was confirmed by Ms. Flowers.

Justice delayed is justice denied. The Ninth Circuit is suppose to rule on whether a 37-cent postage stamped en-

velop allegedly mailed by the Defendant's counsel without benefit of certified mail/return receipt reply or registered mail/return receipt reply or process server to the Petitioner containing their Motion to Dismiss, which the Petitioner states he did not receive, satisfies Petitioner's 5th Amendment Due Process protection to receive adequate notice in accordance with *Mullane v. Central Hanover Bank & Trust,* 339 U.S. 306 (1950). Petitioner believes waiting up to 18 months for the Ninth Circuit to calendar his appeal is outrageous and tramples his rights to a speedy determination on his appeal.

II. THIS WRIT IS WARRANTED BECAUSE THE NINTH CIRCUIT COURT OF APPEALS HAS FAILED TO CARRY OUT ITS MANDATE TO ADJUDICATE APPEALS BEFORE IT IN A TIMELY MANNER AND IN THE PROCESS OF FAILING TO CARRY OUT THIS MANDATE HAS EXHIBITED HOSTILITY TOWARDS THE PETITIONER'S EFFORTS TO PROTECT HIS 1ST, 5TH AND 9TH AMENDMENT RIGHTS.

Petitioner argues the following citations succinctly support his position that the Ninth Circuit has failed in its Constitutional mandate to render decisions in a timely manner:

> a. "Constitutional rights may not be denied simply because of hostility to their assertion and exercise: Vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them that to afford them." *Watson v. Memphis,* 375 U.S. 526 (1963)

b. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona,* 384 U.S. 436, 491 (1966)

c. "Economic necessity cannot justify a disregard of cardinal constitutional guarantee." *Riley v. Certer,* 165 Okla. 262; 25 P.2d 666; 79 ALR 1018.n

CONCLUSION

For the foregoing reasons, the petition for an extraordinary writ in accordance with 28 U.S.C. #1651(a) should be granted.

Respectfully submitted,

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